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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/591,869

06/27/2007

Michel Bachmann

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35023

7590

12/10/2008

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EXAMINER

DANG, PHONG SON H

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

12/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/591,869	Applicant(s) BACHMANN ET AL.	
	Examiner SON DANG	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/06/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US PG PUB No. 2005/0119672 to Benchetrit (Benchetrit) in view of US Patent No. 6,676,674 to Dudai (Dudai).

In Reference to Claims 1-4 and 7:

Benchetrit teaches:

A surgically implantable adjustable ring (1, Fig. 1) for constricting a tubular organ, the adjustable ring comprising: an open ring body (1, Fig. 1) having closure system including a first and a second end parts (3, 4, Fig. 1), the open ring body being designed to be closed around the tubular organ; the closure system constricting the tubular organ by closing the ring and forming the ring into a loop; and the first end part (3, Fig. 1) including a sleeve (5A, Fig. 1) having a first and a second portions (front and back of sleeve, Fig. 1), the sleeve being designed to receive the second end part (4, Fig. 2), the sleeve being disposed in a substantially perpendicular direction in relation to the direction of the first end part (Fig. 1), the second part (4, Fig. 1) comprising a locking protrusion (6, Fig. 1).

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The first end part (3, Fig. 1) comprising a reinforcement structure (11, Fig. 1).

A tab (11, Fig. 2) extending from the second portion of the sleeve (5A, Fig. 2).

The reinforcement structure comprises a flange (11, Fig. 1) disposed transversally to the external perimeter of the ring (1, Fig. 1)

Benchetrit fails to teach:

A locking protrusion adapted to engage an aperture in the sleeve, thereby securing the ring in a closed position in Claim 1.

The second portion of the sleeve contains the aperture, and wherein the second portion of the sleeve partially overlaps the second part when the ring is in the closed position in Claim 2.

Dudai teaches:

A locking protrusion (16, Fig. 3A) adapted to engage an aperture (18, Fig. 3A) in the sleeve, thereby securing the ring in a closed position.

The second portion of the sleeve (the side of hole 18 that first contact with 16, Fig. 3A) contains the aperture (18, Fig. 3A) and wherein the second portion of the sleeve partially overlaps (Fig. 3B) the second end part (1A, Fig. 3B) when the ring is in the closed position.

It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the latching mechanism of Dudai into Benchetrit in order to enhance locking means for the gastric band.

Allowable Subject Matter

3. Claims 5-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US PG PUB No. 2007/0015956 to Crawford et al. teaches a latching device for gastric band.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SON DANG whose telephone number is (571)270-5809. The examiner can normally be reached on Monday-Friday 7:30 AM - 5:00 PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SD

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773